

APPEAL,CLOSED,GITMO,HABEAS,TYPE-G

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:21-cv-02907-RJL
Internal Use Only

AL-HAWSAWI v. BIDEN et al
Assigned to: Judge Richard J. Leon
Cases: 1:08-cv-01645-RJL
1:15-cv-01257-RJL
Cause: 28:2241 Petition for Writ of Habeas Corpus (federa

Date Filed: 11/04/2021
Date Terminated: 03/13/2024
Jury Demand: None
Nature of Suit: 530 Prisoner Petition:
General (Habeas Corpus)
Jurisdiction: Federal Question

Petitioner

MUSTAFA AHMED ADAM
AL-HAWSAWI
Detainee

represented by **Stefan H Krieger**
COMMUNITY LEGAL ASSISTANCE
CORP.
108 Hofstra University
Hempstead, NY 11549
516-463-5934
Email: stefan.h.krieger@hofstra.edu
ATTORNEY TO BE NOTICED

V.

Respondent

JOSEPH R. BIDEN, JR.

represented by **Andrew I. Warden**
U.S. DEPARTMENT OF JUSTICE
1100 L Street NW
Washington, DC 20005
(202) 616-5084
Fax: (202) 616-8470
Email: andrew.warden@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cristen Cori Handley
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
202-305-2677
Email: Cristen.Handley@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kevin Joseph Wynosky
DOJ-CIV
1100 L Street

Room 12004
Washington, DC 20005
202-451-7746
Email: kevin.wynosky@clementmurphy.com
TERMINATED: 11/17/2023
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Terry Marcus Henry
DOJ-CIV
Civil Division, Federal Programs Branch
1100 L Street, NW
Room 7500
Washington, DC 20530
202-514-4107
Email: terry.henry@usdoj.gov
TERMINATED: 05/10/2025
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

LLOYD J. AUSTIN, III

represented by **Andrew I. Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cristen Cori Handley
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kevin Joseph Wynosky
(See above for address)
TERMINATED: 11/17/2023
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Terry Marcus Henry
(See above for address)
TERMINATED: 05/10/2025
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

LANCE A. OKAMURA
Brigadier General

represented by **Andrew I. Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cristen Cori Handley
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kevin Joseph Wynosky
(See above for address)
TERMINATED: 11/17/2023
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Terry Marcus Henry
(See above for address)
TERMINATED: 05/10/2025
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/04/2021	<u>1</u>	PETITION for Writ of Habeas Corpus (Filing fee \$5 receipt number 200953) filed by MUSTAFA AHMED ADAM AL-HAWSAWI. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Related Case Form, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons)(Krieger, Stefan) Modified on 11/4/2021 to correct docket entry text (zsb). Modified on 11/8/2021 to add filing fee payment (zsb). (Entered: 11/04/2021)
11/04/2021	<u>2</u>	NOTICE OF RELATED CASE by MUSTAFA AHMED ADAM AL-HAWSAWI. Case related to Case No. 08-1645 and 15-1257. (zsb) (Entered: 11/04/2021)
11/04/2021		NOTICE OF ERROR re <u>1</u> Complaint; emailed to stefan.h.krieger@hofstra.edu, cc'd 0 associated attorneys -- The PDF file you docketed contained errors: 1. Noncompliance with LCvR 5.1(c). Please file an errata correcting the initiating pleading to include the name & full residence address of each party using the event Errata., 2. Filing fee for Petition for Writ of Habeas Corpus not paid. Please remit \$5 filing fee payment via check or money order. In the future, do not file these kinds of cases electronically., 3. COMPLIANCE DEADLINE is by close of business today. This case will not proceed any further until all errors are satisfied. (zsb,) (Entered: 11/04/2021)
11/08/2021		Filing fee received: \$ 5, receipt number: 200953. (zsb) (Entered: 11/08/2021)
11/08/2021		Case Assigned to Judge Richard J. Leon. (zsb) (Entered: 11/08/2021)
11/08/2021		SUMMONS Are Not Issued for Petition for Habeas (zsb) Modified on 11/10/2021 (zjf). (Entered: 11/10/2021)
12/07/2021	<u>3</u>	Unopposed MOTION for Protective Order, MOTION for Scheduling Order by MUSTAFA AHMED ADAM AL-HAWSAWI. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Text of Proposed Order)(Krieger, Stefan). Added MOTION for Scheduling Order on 12/8/2021 (zjf). (Entered: 12/07/2021)
12/08/2021	<u>4</u>	STANDING ORDER. Signed by Judge Richard J. Leon on 12/08/2021. (lcrjl3) (Entered: 12/08/2021)
12/08/2021	<u>5</u>	NOTICE of Appearance by Kevin Joseph Wynosky on behalf of All Defendants (Wynosky, Kevin) (Entered: 12/08/2021)
12/08/2021	<u>6</u>	

		NOTICE of Appearance by Terry Marcus Henry on behalf of LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA (Henry, Terry) (Entered: 12/08/2021)
12/09/2021	<u>7</u>	CERTIFICATE OF SERVICE by MUSTAFA AHMED ADAM AL-HAWSAWI re <u>4</u> Order <i>Case Management Order</i> . (Krieger, Stefan) (Entered: 12/09/2021)
12/10/2021		MINUTE ORDER. Upon consideration of petitioner's <u>3</u> Unopposed Motion for Entry of Protective and Scheduling Orders, it is hereby ORDERED that the motion is GRANTED IN PART and DENIED IN PART. The motion is DENIED WITHOUT PREJUDICE as to the request for a protective order. The motion asks the Court to "adopt" an order signed by a different judge, in a different case, and containing clauses that may no longer be relevant. See, e.g., Dkt. # 3-1 15 (designating by name Court Security Officers from 2009 protective order). Pursuant to LCvR 7(c), petitioners must instead provide the Court a proposed protective order with the correct case caption, a blank signature block, and up-to-date information (as needed). The motion is GRANTED as to the request for a scheduling order. Pursuant to 28 U.S.C. § 2243, respondents shall file on or before January 5, 2022 a responsive pleading showing cause why the writ of habeas corpus should not issue. SO ORDERED. Signed by Judge Richard J. Leon on 12/10/2021. (lcrjl3) (Entered: 12/10/2021)
01/02/2022	<u>8</u>	Unopposed MOTION for Extension of Time to <i>Respond to Petition</i> by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Wynosky, Kevin) (Entered: 01/02/2022)
01/05/2022		MINUTE ORDER. Upon consideration of respondents' <u>8</u> Unopposed Motion for an Extension of Time, it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that respondents shall file on or before January 19, 2022 a responsive pleading showing cause why the writ of habeas corpus should not issue. SO ORDERED. Signed by Judge Richard J. Leon on 01/05/2022. (lcrjl3) (Entered: 01/05/2022)
01/15/2022	<u>9</u>	Unopposed MOTION for Extension of Time to <i>Respond to Petition</i> by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Attachments: # <u>1</u> Proposed Order)(Wynosky, Kevin) (Entered: 01/15/2022)
01/19/2022		MINUTE ORDER. Upon consideration of respondents' <u>9</u> Unopposed Motion for an Extension of Time, it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that respondents shall file on or before February 2, 2022 a responsive pleading showing cause why the writ of habeas corpus should not issue. SO ORDERED. Signed by Judge Richard J. Leon on 01/19/2022. (lcrjl3) (Entered: 01/19/2022)
01/31/2022	<u>10</u>	Unopposed MOTION for Protective Order <i>and Counsel Access Procedures Entry</i> by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Attachments: # <u>1</u> Exhibit Protective Order and Counsel Access Procedures)(Henry, Terry) (Entered: 01/31/2022)
02/01/2022	<u>11</u>	PROTECTIVE ORDER AND COUNSEL ACCESS PROCEDURES. See attached order for details. Signed by Judge Richard J. Leon on 02/01/2022. (lcrjl3) (Entered: 02/01/2022)
02/02/2022	<u>12</u>	MOTION to Dismiss by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Attachments: # <u>1</u> Exhibit A: Secretary of the Army Memo, # <u>2</u> Exhibit B: Dalbey Declaration, # <u>3</u> Exhibit C: CSRT Memo, # <u>4</u> Exhibit D: CSRT

		Summary)(Wynosky, Kevin). Added MOTION for Judgment on 4/3/2022 (znmw). (Entered: 02/02/2022)
02/02/2022	<u>13</u>	NOTICE of Classified Filing by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA (Wynosky, Kevin) (Entered: 02/02/2022)
02/02/2022	<u>14</u>	RESPONSE TO PETITION FOR HABEAS CORPUS re <u>1</u> Complaint, filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (See Docket Entry <u>12</u> to view document) (zjf) (Entered: 02/03/2022)
02/04/2022	<u>15</u>	MEMORANDUM re <u>11</u> Order on Motion for Protective Order by MUSTAFA AHMED ADAM AL-HAWSAWI. (Krieger, Stefan) (Entered: 02/04/2022)
03/02/2022	<u>16</u>	Joint STATUS REPORT by MUSTAFA AHMED ADAM AL-HAWSAWI. (Krieger, Stefan) (Entered: 03/02/2022)
03/08/2022		MINUTE ORDER. Upon consideration of the parties' <u>16</u> Joint Status Report, the Court hereby ORDERS that the parties submit another Joint Status Report within 30 days proposing a briefing schedule for petitioner's response, including any traverse, to respondents' <u>12</u> Motion to Dismiss or for Judgment, the respondents' reply in support of their motion, and any additional briefing as requested by the parties. It is further ORDERED that the parties' forthcoming Joint Status Report advise the Court as to the status of petitioner's discovery requests, and the timeline for any response to the discovery requests by respondents. SO ORDERED. Signed by Judge Richard J. Leon on 3/8/2022. (lcrjl2) (Entered: 03/08/2022)
04/07/2022	<u>17</u>	Joint STATUS REPORT by MUSTAFA AHMED ADAM AL-HAWSAWI. (Attachments: # <u>1</u> Text of Proposed Order)(Krieger, Stefan) (Entered: 04/07/2022)
04/08/2022	<u>18</u>	ORDER. Upon consideration of the parties' <u>17</u> Joint Status Report, it is hereby ORDERED that the proposed scheduling order is adopted. See attached Order for schedule. Signed by Judge Richard J. Leon on 4/8/22. (lcrjl2) (Entered: 04/08/2022)
04/08/2022		Set/Reset Deadlines: Response due by 9/6/2022. Reply due by 10/6/2022. (smc) (Entered: 04/11/2022)
06/06/2022	<u>19</u>	NOTICE REGARDING CERTAIN BUILDINGS WITHIN CAMP DELTA by ALL RESPONDENTS. (Attachments: # <u>1</u> Exhibit)(ztnr) (Entered: 06/06/2022)
06/06/2022	<u>20</u>	SEALED DOCUMENT filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, ANTONY BLINKEN, EDWARD B. CASHMAN, GEORGE WALKER BUSH, WADE F. DAVIS, HARRY B. HARRIS, JR, DONALD RUMSFELD, TOM COPEMAN, ROBERT M. GATES, BARACK HUSSEIN OBAMA, II, BRUCE VARGO, JOHN D. ALTENBURG, JR, MICHAEL BUMGARNER, GORDON R. ENGLAND, JAY HOOD, ROBERT GATES, BARACK HUSSEIN OBAMA, II, DAVID THOMAS, JR, BRUCE VARGO, MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, MIKE BUMGARNER, JAY HOOD, DONALD J. TRUMP, BRICE GYURISKO, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, ROBERT GATES, DAVID M. THOMAS, JR, JAY HOOD, DONALD HENRY RUMSFELD, DAVID M. THOMAS, JR, BRUCE E. VARGO, ROBERT M. GATES, MIKE BUMGARNER, NELSON J. CANNON, JAY HOOD, LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA, STEVEN BLAISDELL, TOM COPEMAN, ROBERT GATES, BRICE GYURISKO, BARACK HUSSEIN OBAMA, II, NELSON J. CANNON, MIKE BUMGARNER, ALL

		RESPONDENTS, JOSEPH R. BIDEN, TOM COPERMAN, BRUCE VARGO, ROBERT M. GATES, DONNIE THOMAS, MIKE BUMGARNER, JAY HOOD, ASHTON B. CARTER, JOHN DOE, DAVID E. HEATH, JOSE R. MONTEAGUDO, LLOYD J. AUSTIN, III, GEORGE WALKER BUSH, HARRY B. HARRIS, JR, DONALD HENRY RUMSFELD, MARK H. BUZBY, ROBERT M. GATES, COMMANDER, JOINT TASK FORCE, GTMO, COMMANDER, PRISON CAMP, GTMO, RICHARD B. CHENEY, JOHN DOE CORPORATION, MICHAEL V. HAYDEN, CONDOLEEZZA RICE, DONALD RUMSFELD, GEORGE TENET, DAVID M. THOMAS, BRUCE VARGO, EDWARD B. CASHMAN, DAVID CULPEPPER, JAMES N. MATTIS, HARVEY RISHIKOF, DONALD J. TRUMP, WADE F. DAVIS, HARRY B. HARRIS, JR, KYLE J. COZAD, DAVID HEATH, DONALD J. TRUMP, LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, PETER J. CLARKE, BRUCE VARGO, JAY HOOD(This document is SEALED and only available to authorized persons.)(Heiman, Julia) (Entered: 06/06/2022)
09/01/2022	<u>21</u>	Unopposed MOTION for Extension of Time to <i>File Response to Respondents' Motion to Dismiss or for Judgment</i> by MUSTAFA AHMED ADAM AL-HAWSAWI. (Attachments: # <u>1</u> Text of Proposed Order)(Krieger, Stefan) (Entered: 09/01/2022)
09/07/2022		MINUTE ORDER. Upon consideration of petitioner's <u>21</u> Unopposed Motion for an Extension of Time, it is hereby ORDERED that the motion is GRANTED nunc pro tunc. It is further ORDERED that petitioner shall file any response no later than November 22, 2022 and that respondents shall file any reply no later than December 22, 2022. SO ORDERED. Signed by Judge Richard J. Leon on 9/7/22. (lcrjl2) (Entered: 09/07/2022)
11/22/2022	<u>22</u>	SEALED OPPOSITION filed by MUSTAFA AHMED ADAM AL-HAWSAWI. re <u>12</u> Motion to Dismiss, (Attachments: # <u>1</u> Declaration Declaration of Dr. James Lax, # <u>2</u> Declaration Declaration of Stephen Xenakis, # <u>3</u> Declaration Declaration of Stefan H. Krieger, # <u>4</u> Exhibit Exhibit 1, # <u>5</u> Exhibit Exhibit 2, # <u>6</u> Exhibit Exhibit 3, # <u>7</u> Exhibit Exhibit 4, # <u>8</u> Exhibit Exhibit 5, # <u>9</u> Exhibit Exhibit 6, # <u>10</u> Exhibit Exhibit 7, # <u>11</u> Exhibit Exhibit 8, # <u>12</u> Exhibit Exhibit 9, # <u>13</u> Exhibit Exhibit 10, # <u>14</u> Exhibit Exhibit 11)(Krieger, Stefan) (Entered: 11/22/2022)
11/22/2022	<u>23</u>	NOTICE of Filing Under Seal Petitioner's Opposition to Respondents' Response to Petition for a Writ of Habeas Corpus & Motion to Dismiss or for Judgment by MUSTAFA AHMED ADAM AL-HAWSAWI re <u>22</u> Sealed Opposition,, (Krieger, Stefan) (Entered: 11/22/2022)
12/16/2022	<u>24</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>12</u> MOTION to Dismiss <i>or for Judgment in Response to Petition</i> by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Attachments: # <u>1</u> Text of Proposed Order)(Wynosky, Kevin) (Entered: 12/16/2022)
12/18/2022	<u>25</u>	Unopposed MOTION for Order <i>Allowing Petitioner to File an Amended Exhibit 11 to his Opposition to Respondents' Motion to Dismiss or for Judgment</i> by MUSTAFA AHMED ADAM AL-HAWSAWI. (Attachments: # <u>1</u> Exhibit Amended Exhibit 11, # <u>2</u> Text of Proposed Order)(Krieger, Stefan) (Entered: 12/18/2022)
12/20/2022		MINUTE ORDER. Upon consideration of respondents' <u>24</u> Unopposed Motion for Extension of Time, it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that respondents shall submit their reply brief by no later than February 17, 2023. SO ORDERED. Signed by Judge Richard J. Leon on 12/20/2022. (lcrjl2) (Entered: 12/20/2022)

12/21/2022		MINUTE ORDER. Upon consideration of petitioner's <u>25</u> Unopposed Motion for Order Allowing Petitioner to File an Amended Exhibit 11 to his Opposition, it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that Amended Exhibit 11 shall be deemed timely filed nunc pro tunc. SO ORDERED. Signed by Judge Richard J. Leon on 12/21/2022. (lcrjl2) (Entered: 12/21/2022)
12/28/2022	<u>26</u>	Memorandum in opposition to re <u>12</u> Motion to Dismiss, filed by MUSTAFA AHMED ADAM AL-HAWSAWI. (Attachments: # <u>1</u> Declaration Declaration of Stefan H. Krieger, # <u>2</u> Declaration Declaration of Dr. James Lax, # <u>3</u> Declaration Declaration of Dr. Stephen N. Xenakis, # <u>4</u> Exhibit Exhibit 1 CV of Dr. James Lax, # <u>5</u> Exhibit Exhibit 2 Excerpts from Select Senate Committee Report, # <u>6</u> Exhibit Exhibit 3 Excerpts from Gut Feelings, # <u>7</u> Exhibit Exhibit 4 Excerpts from Uncovering Re-traumatization, # <u>8</u> Exhibit Exhibit 5 Filed Under Seal as Protected Information, # <u>9</u> Exhibit Exhibit 6 Excerpts from CMO Testimony, # <u>10</u> Exhibit Exhibit 7 Government Response to Motion to Waive Appearance, # <u>11</u> Exhibit Exhibit 8 Errata to Senate Report, # <u>12</u> Exhibit Exhibit 9 CV of Dr. Stephen Xenakis, # <u>13</u> Exhibit Exhibit 10 Army Regulation 190-8, # <u>14</u> Exhibit Amended Exhibit 11 Request for Repatriation)(Krieger, Stefan) (Entered: 12/28/2022)
12/28/2022	<u>27</u>	NOTICE of Filing on the Public Record of Documents Previously Filed Under Seal by MUSTAFA AHMED ADAM AL-HAWSAWI re <u>26</u> Memorandum in Opposition,, (Krieger, Stefan) (Entered: 12/28/2022)
02/08/2023	<u>28</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>12</u> MOTION to Dismiss <i>or for Judgment in Response to Petition</i> by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Wynosky, Kevin) (Entered: 02/08/2023)
02/09/2023		MINUTE ORDER. Upon consideration of respondents' <u>28</u> Unopposed Motion for Extension of Time, it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that respondents shall submit their reply brief by no later than March 17, 2023. SO ORDERED. Signed by Judge Richard J. Leon on 2/9/2023. (lcrjl2) (Entered: 02/09/2023)
02/09/2023		Set/Reset Deadlines: Reply Brief due by 3/17/2023. (zsmc) (Entered: 02/09/2023)
03/17/2023	<u>29</u>	REPLY to opposition to motion re <u>12</u> Motion to Dismiss, Motion for Judgment filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Attachments: # <u>1</u> Exhibit 1: Schipper et al. (Full))(Wynosky, Kevin) Modified to add link on 4/3/2023 (znmw). (Entered: 03/17/2023)
03/17/2023	<u>30</u>	SEALED DOCUMENT filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA(This document is SEALED and only available to authorized persons.)(Wynosky, Kevin) (Entered: 03/17/2023)
03/17/2023	<u>31</u>	SEALED DOCUMENT filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA(This document is SEALED and only available to authorized persons.)(Wynosky, Kevin) (Entered: 03/17/2023)
03/28/2023	<u>32</u>	SEALED MOTION FOR LEAVE TO FILE DOCUMENT UNDER SEAL filed by MUSTAFA AHMED ADAM AL-HAWSAWI (This document is SEALED and only available to authorized persons.) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Declaration of Ureib Qassis, # <u>3</u> Declaration of Stefan H. Krieger, # <u>4</u> Exhibit 12, # <u>5</u> Exhibit 13, # <u>6</u> Exhibit 14, # <u>7</u> Text of Proposed Order)(Krieger, Stefan) (Entered: 03/28/2023)

03/28/2023	<u>33</u>	NOTICE of Filing Under Seal of Petitioner's Motion for Leave to File Surreply by MUSTAFA AHMED ADAM AL-HAWSAWI re <u>32</u> Sealed Motion for Leave to File Document Under Seal, (Krieger, Stefan) (Entered: 03/28/2023)
03/31/2023	<u>34</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA (Attachments: # <u>1</u> Exhibit 1)(Wynosky, Kevin) (Entered: 03/31/2023)
03/31/2023		MINUTE ORDER. Upon consideration of petitioner's <u>32</u> Sealed Motion for Leave to File Document Under Seal, it is hereby ORDERED that the motion is GRANTED. The Clerk is directed to file [32-1] under seal. SO ORDERED. Signed by Judge Richard J. Leon on 3/31/2023. (lcrjl2) (Entered: 03/31/2023)
03/31/2023	<u>35</u>	SEALED SURREPLY filed by MUSTAFA AHMED ADAM AL-HAWSAWI re <u>29</u> Reply to opposition to Motion. (This document is SEALED and only available to authorized persons.)(znmw) (Entered: 04/03/2023)
09/12/2023	<u>36</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA (Attachments: # <u>1</u> Exhibit 1: Slip Opinion, al-Baluchi v. Austin, No. 08-cv-2083 (D.D.C. Sept. 8, 2023))(Wynosky, Kevin) (Entered: 09/12/2023)
11/17/2023	<u>37</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Cristen Cori Handley on behalf of LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA Substituting for attorney Kevin Wynosky (Handley, Cristen) (Entered: 11/17/2023)
03/13/2024	<u>38</u>	MEMORANDUM OPINION. See attached MEMORANDUM OPINION for details. Signed by Judge Richard J. Leon on 3/12/2024. (lcrjl1) (Entered: 03/13/2024)
03/13/2024	<u>39</u>	ORDER. See attached ORDER for details. Signed by Judge Richard J. Leon on 3/12/2024. (lcrjl1) (Entered: 03/13/2024)
04/10/2024	<u>40</u>	SEALED MOTION filed by MUSTAFA AHMED ADAM AL-HAWSAWI (Attachments: # <u>1</u> Exhibit Proposed First Amended Petition for Writ of Habeas Corpus, # <u>2</u> Declaration Stefan H. Krieger, # <u>3</u> Text of Proposed Order Proposed Order)(Krieger, Stefan) (Entered: 04/10/2024)
04/10/2024	<u>41</u>	NOTICE of Filing Under Seal by MUSTAFA AHMED ADAM AL-HAWSAWI re <u>40</u> Sealed Motion (Krieger, Stefan) (Entered: 04/10/2024)
04/19/2024	<u>42</u>	MOTION for Extension of Time to File Response/Reply by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Attachments: # <u>1</u> Text of Proposed Order)(Handley, Cristen) (Entered: 04/19/2024)
04/20/2024	<u>43</u>	Memorandum in opposition to re <u>42</u> Motion for Extension of Time to File Response/Reply filed by MUSTAFA AHMED ADAM AL-HAWSAWI. (Krieger, Stefan) (Entered: 04/20/2024)
04/21/2024	<u>44</u>	REPLY to opposition to motion re <u>42</u> MOTION for Extension of Time to File Response/Reply filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Handley, Cristen) (Entered: 04/21/2024)
04/23/2024		MINUTE ORDER. Upon consideration of <u>42</u> Respondents' Motion for Extension of Time, <u>43</u> Petitioner's Opposition, and <u>44</u> Respondents' Reply, it is hereby ORDERED that the motion is GRANTED; it is further ORDERED that Respondents shall file their response to <u>40</u> Petitioner's Sealed Motion on or before June 24, 2024. SO ORDERED.

		Signed by Judge Richard J. Leon on 4/23/2024. (lcrjl1) (Entered: 04/23/2024)
06/24/2024	<u>45</u>	Memorandum in opposition to re <u>40</u> Sealed Motion to Alter or Amend Judgment and For Leave to File Amended Petition for Writ of Habeas Corpus filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. (Handley, Cristen) (Entered: 06/24/2024)
06/24/2024	<u>46</u>	NOTICE of Classified Filing by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA re <u>45</u> Memorandum in Opposition (Handley, Cristen) (Entered: 06/24/2024)
07/01/2024	<u>47</u>	SEALED REPLY TO OPPOSITION filed by MUSTAFA AHMED ADAM AL-HAWSAWI re <u>40</u> Sealed Motion (This document is SEALED and only available to authorized persons.) (Attachments: # <u>1</u> Declaration Stefan H. Krieger, # <u>2</u> Exhibit Exhibit 2)(Krieger, Stefan) (Entered: 07/01/2024)
07/01/2024	<u>48</u>	NOTICE of Filing Under Seal of Petitioner's Reply Memorandum in Support of His Motion to Alter or Amend Judgment and to File First Amended Petition for Write of Habeas Corpus by MUSTAFA AHMED ADAM AL-HAWSAWI (Krieger, Stefan) (Entered: 07/01/2024)
08/13/2024	<u>49</u>	SEALED DOCUMENT filed by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA re <u>46</u> Notice (Other) (This document is SEALED and only available to authorized persons.)(Handley, Cristen) (Entered: 08/13/2024)
08/13/2024	<u>50</u>	NOTICE of Sealed Filing by LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA re <u>49</u> Sealed Document (Handley, Cristen) (Entered: 08/13/2024)
11/25/2024	<u>51</u>	Unopposed MOTION to Amend/Correct <i>Protective Order</i> by JOSEPH R. BIDEN, JR, LLOYD J. AUSTIN, III, LANCE A. OKAMURA. (Attachments: # <u>1</u> Exhibit 1: Redline Showing Proposed Changes To Protective Order, # <u>2</u> Exhibit 2: Proposed Second Amended Protective Order)(Warden, Andrew) (Entered: 11/25/2024)
12/03/2024		MINUTE ORDER. It is hereby ORDERED that <u>51</u> Unopposed Motion to Amend Protective Order is GRANTED. The Court will enter the amended protective order separately. SO ORDERED. Signed by Judge Richard J. Leon on 12/3/2024. (lcrjl1) (Entered: 12/03/2024)
12/03/2024	<u>52</u>	AMENDED PROTECTIVE ORDER. See attached for details. Signed by Judge Richard J. Leon on 12/3/2024. (lcrjl1) (Entered: 12/03/2024)
02/03/2025	<u>53</u>	MEMORANDUM re <u>52</u> Protective Order by MUSTAFA AHMED ADAM AL-HAWSAWI. (Krieger, Stefan) (Entered: 02/03/2025)
03/21/2025	<u>54</u>	ORDER denying <u>40</u> Petitioner's Motion to Alter or Amend Judgment and for Leave to File First Amended Petition for Writ of Habeas Corpus. Signed by Judge Richard J. Leon on 3/20/2025. (lcrjl1) (Entered: 03/21/2025)
03/21/2025	<u>55</u>	MEMORANDUM OPINION. Signed by Judge Richard J. Leon on 3/20/2025. (lcrjl1) (Entered: 03/21/2025)
03/21/2025	<u>56</u>	AMENDED ORDER correcting <u>39</u> Order. Signed by Judge Richard J. Leon on 3/20/2025. (lcrjl1) (Entered: 03/21/2025)
05/10/2025	<u>57</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to LLOYD J. AUSTIN, III, JOSEPH R. BIDEN, JR, LANCE A. OKAMURA. Attorney Terry Marcus Henry

		terminated. (Henry, Terry) (Entered: 05/10/2025)
05/16/2025	<u>58</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>54</u> Order on Sealed Motion by MUSTAFA AHMED ADAM AL-HAWSAWI. Filing fee \$ 605, receipt number ADCDC-11695735. Fee Status: Fee Paid. Parties have been notified. (Krieger, Stefan) (Entered: 05/16/2025)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MUSTAFA AHMED AL-HAWSAWI,

Petitioner,

v.

DONALD J. TRUMP, et al.,

Respondents.

Civil Action No. 21-cv-2907
(RJL)

NOTICE OF APPEAL

Petitioner Mustafa Ahmed al-Hawsawi, through undersigned counsel, hereby appeals all aspects of this Court's order entered on March 21, 2025 in the above-captioned case (Dkt 54) to the United States Court of Appeals for the District of Columbia Circuit.

Dated: May 16, 2025

Respectfully submitted,

/s/Stefan Krieger

Stefan H. Krieger (NY0341)

Attorney for Petitioner

Hofstra Law Clinic

108 Hofstra Law Clinic

108 Hofstra Universit

Hempstead, NY 11549

516-463-5934

CERTIFICATE OF SERVICE

On May 16, 2025 I electronically submitted this document under seal to the clerk of court of the U.S. District Court for the District of Columbia using the court's electronic case filing system. I certify that I have served all parties electronically as authorized by Federal Rule of Civil Procedure 5(b)(2)(E).

/s/Stefan Krieger
Stefan H. Krieger (NY0341)
Attorney for Petitioner
Hofstra Law Clinic
108 Hofstra University
Hempstead, NY 11549
516-463-5934

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MUSTAFA AHMED AL-HAWSAWI,)
)
 Petitioner,)
)
 v.) Civil Case No. 21-cv-2907 (RJL)
)
 DONALD J. TRUMP, *et al.*,)
)
 Respondents.)

MEMORANDUM OPINION

March ¹⁴20, 2025 [Dkt. #40]

I. BACKGROUND¹

Petitioner Mustafa al-Hawsawi (“petitioner” or “al-Hawsawi”) has been detained at the United States Naval Base in Guantanamo Bay, Cuba (“Guantanamo”) since 2006. During his detention, he has suffered from multiple digestive and colorectal conditions. In 2021, he filed a petition for a writ of habeas corpus, arguing that the medical treatment he receives at Guantanamo violates the Eighth Amendment. *See* Pet. for Writ of Habeas Corpus (“2021 Petition”) [Dkt. #1]. On March 13, 2024, on respondents’ motion, the Court entered judgment for respondents and dismissed the 2021 Petition. *See* Mem. Op. [Dkt. #38]; Order [Dkt. #39].

Petitioner then filed a motion (1) to alter or amend that judgment under Federal Rule of Civil Procedure 59(e); and (2) for leave to file an amended petition under Federal Rule of Civil Procedure 15. Pet.’s Mot. to Alter or Amend J. and for Leave to File First

¹ The alleged facts are set out in more detail in the Court’s Memorandum Opinion granting respondents’ motion to dismiss or for judgment. *See* Mem. Op. [Dkt. #38].

Am. Pet. for Writ of Habeas Corpus (“Pet.’s Mot.”) [Dkt. #40]. Respondents oppose the motion. Resp’ts’ Opp’n to Pet.’s Mot. (“Resp’ts’ Opp’n”) [Dkt. #45]. For the reasons set forth below, I will **DENY** petitioner’s motion.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 59(e) permits courts to alter or amend previous judgments. However, this is an “extraordinary remedy which should be used sparingly.” *Mohammadi v. Islamic Republic of Iran*, 782 F.3d 9, 17 (D.C. Cir. 2015) (cleaned up). The grounds for granting a Rule 59(e) motion are limited to: “an ‘intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.’” *Id.* (quoting *Patton Boggs LLP v. Chevron Corp.*, 683 F.3d 397, 403 (D.C. Cir. 2012)). Rule 59(e) “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Leidos, Inc. v. Hellenic Republic*, 881 F.3d 213, 217 (D.C. Cir. 2018) (quoting *Exxon Shipping v. Baker*, 554 U.S. 471, 486 n.5 (2008)).

III. ANALYSIS

At the outset, I will address two threshold issues regarding my March 13, 2024 decision. *First*, the parties dispute whether the March 13, 2024 Order is a final judgment from which petitioner can seek relief. *See* Resp’ts’ Opp’n 13 n.6; Pet.’s Reply Mem. in Supp. of Pet.’s Mot. [Dkt. #47] 1 n.2. I find that, under Federal Rule of Civil Procedure 58, it is a final judgment. Although the Order is not labeled a “judgment,” it is set out in a separate document “distinct from any opinion or memorandum” and does not contain legal reasoning. *See Kidd v. District of Columbia*, 206 F.3d 35, 38 (D.C. Cir. 2000); Fed.

R. Civ. P. 58(a), (c)(2)(A). As such, the March 13, 2024 Order constitutes a final judgment dismissing the 2021 Petition.

Second, the parties dispute whether dismissal was with or without prejudice. The Order is silent as to the nature of dismissal, so it is deemed to be with prejudice. *See* Fed. R. Civ. P. 41(b) (“Unless the dismissal order states otherwise . . . any dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.”). However, the Court’s intent was to dismiss the 2021 Petition without prejudice.² This is a typographical error which the Court will correct pursuant to Rule 60(a), which permits the Court to, on its own motion, “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a); *see Rivera v. PNS Stores Inc.*, 647 F.3d 188, 193–98 (5th Cir. 2011) (finding that Rule 60(a) was an appropriate avenue for correcting a judgment because “[i]nadvertently designating a dismissal as being ‘without prejudice’ instead of ‘with prejudice’ is the type of rote, typographical error of transcription that could be committed by a law clerk or a judicial assistant.”). I will issue a corrected Order reflecting dismissal without prejudice.

A. Motion to Alter or Amend Judgment

Petitioner’s Rule 59(e) motion asks the Court to alter or amend the March 13, 2024 decision “because he has discovered new evidence which cures the defects in the

² Dismissal with prejudice is appropriate if “the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *See Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996) (quoting *Jarrell v. United States Postal Serv.*, 753 F.2d 1088, 1091 (D.C. Cir. 1985)). The Memorandum Opinion accompanying the Order makes no such findings. *See generally* Mem. Op.

[2021] Petition.” Pet.’s Mot. 5.³ To establish that new evidence supports a Rule 59(e) motion, the party seeking relief must show:

(1) the newly discovered evidence concerns facts that existed at the time of trial or another dispositive proceeding; (2) the party seeking relief was justifiably ignorant of the evidence despite his or her due diligence; (3) the evidence is admissible and of such importance that it probably would have changed the outcome; and (4) the evidence [is] not [] merely cumulative or impeaching.”

See Barnard v. Dep’t of Homeland Sec., 598 F. Supp. 2d 1, 26 (D.D.C. 2009) (quoting *Epps v. Howes*, 573 F. Supp. 2d 180, 185 (D.D.C. 2008)).⁴

Petitioner points to three supposedly new pieces of evidence, but none meet Rule 59(e)’s stringent requirements. The first two pieces of evidence were previously cited and discussed in the parties’ briefing on respondents’ motion to dismiss or for judgment. *See* Pet.’s Mot. 6 (citing evidence from respondents’ declaration attached to their reply brief in support of the motion to dismiss or for judgment, Rebuttal Declaration of Senior Medical Officer for High Value Detainees [Dkt. #31] ¶ 10, filed in March 2023⁵); *id.* (citing a medical record petitioner brought to the Court’s attention in his Surreply to Respondent’s Reply Supporting Motion to Dismiss or for Judgment [Dkt. #35], filed in

³ Petitioner also argues that dismissal with prejudice was erroneous and the Court should amend the Order to reflect dismissal without prejudice. Pet.’s Mot. 10–11. However, as explained above, dismissal with prejudice was a clerical error warranting correction under Rule 60(a), not a substantive error requiring remediation under Rule 59(e). The Court has now corrected the Order, mooting this argument.

⁴ While this case discusses the standard under Rule 60(b), the Rule 60(b) and Rule 59(e) standards are generally the same and the parties agree that this is the proper standard. *See* 11 CHARLES A. WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PRO. CIV. (3D ED.) § 2808 (“The same standard applies for establishing this ground for relief [newly discovered evidence], whether the motion is under Rule 59 or 60(b)(2).”); Pet.’s Mot. 5; Resp’ts’ Opp’n 5 n.3.

⁵ In fact, petitioner himself addressed this rebuttal declaration in a surreply brief filed with the Court in March 2023. *See* Surreply to Resp’ts’ Reply Supp. Mot. to Dismiss or for J. [Dkt. #35].

March 2023⁶). By definition, neither piece of evidence is new. Petitioner cannot use Rule 59(e) “to relitigate [these] old matters.” *See Leidos, Inc.*, 881 F.3d at 217.

Petitioner’s third piece of evidence—a set of medical records, *see* Pet.’s Mot. 6–7—is not new either, as petitioner was not “justifiably ignorant of its existence despite his [] due diligence.” *See Barnard*, 598 F. Supp. 2d at 26. Petitioner’s counsel concedes that he found the relevant records on January 25, 2024, months before the Court issued its March 13, 2024 decision. *See* Pet.’s Mot. Ex. 2, Decl. of Stefan H. Krieger (“Krieger Decl.”) [Dkt. #40-2] ¶ 4. Petitioner could and should have raised this evidence when it came to light. *See Hentif v. Obama*, 883 F. Supp. 2d 97, 100 (D.D.C. 2012) (“Evidence is not ‘newly discovered’ if a party had the ability to present it to the finder of fact prior to entry of judgment.”); *Harris v. Howard Univ.*, 1996 U.S. Dist. LEXIS 21780, at *8–9 (D.D.C. May 23, 1996) (finding that evidence was not “newly discovered” because the plaintiff “was aware of this information two months before this court’s order dismissing her complaint” and she “had ample time to bring this evidence to the court’s attention”).⁷

Since none of petitioner’s evidence is newly discovered, I will deny his Rule 59(e) motion.

⁶ Petitioner concedes that he brought this evidence before the Court almost two years ago. *See* Pet.’s Mot. Ex. 2, Decl. of Stefan H. Krieger (“Krieger Decl.”) [Dkt. #40-2] ¶ 2 (“During this review [on March 2, 2023], I discovered medical records . . . On March 28, 2023, I promptly submitted these documents to this Court in support of Petitioner’s Surreply.”).

⁷ Additionally, even if petitioner only discovered this evidence on January 25, 2024, it was likely discoverable through due diligence before that. Petitioner’s counsel acknowledges that he “visited Defense Counsel’s Secure Facility”—where he eventually found these medical records—“from June 1, 2022 to the [sic] July 19, 2023.” *See* Krieger Decl. ¶ 4.

B. Motion for Leave to File an Amended Habeas Petition

Petitioner also moves for leave to file his Proposed Amended Petition under Rule 15(a)(2). Pet.’s Mot. 11–16. I will deny this motion as well.

Once a court enters judgment on a habeas petition, a party seeking to amend the petition must first succeed under Rule 59(e) in altering or amending that judgment. *See Mohammadi*, 782 F.3d at 17 (“[A]fter entry of judgment, a court has no obligation to grant leave to amend unless a plaintiff first satisfies ‘Rule 59(e)’s more stringent standard for setting aside that judgment.” (quoting *Ciralsky v. CIA*, 355 F.3d 661, 673 (D.C. Cir. 2004))).

This is true even when the judgment dismissed the case without prejudice. In *Ciralsky*, our Circuit analyzed a situation similar to the one before me. *See generally* 355 F.3d 673. The district court granted a motion to dismiss without prejudice, after which the plaintiff filed a Rule 59(e) motion and a motion for leave to file an amended complaint. *See id.* at 664. The district court denied both motions. *See id.* at 665. Our Circuit agreed with the district court’s logic:

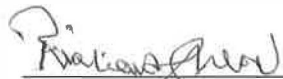
Because we conclude that the district court did not abuse its discretion in denying Ciralsky’s Rule 59(e) motion, we likewise conclude that it did not err thereafter in denying Ciralsky’s motion for leave to file an amended complaint under Rule 15(a). Rule 15(a) provides that leave to amend “shall be freely given when justice so requires.” As we held in *Firestone*, however, once a final judgment has been entered, a court cannot permit an amendment unless the plaintiff “first satisfies Rule 59(e)’s more stringent standard” for setting aside that judgment. . . . Since the court declined to set aside the judgment under Rule 59(e), it properly concluded that Ciralsky’s motion to amend under Rule 15(a) was moot.

Id. at 673 (internal citations omitted).

Here, petitioner has not met Rule 59(e)'s standard for altering or amending the Court's judgment dismissing the 2021 Petition. *See supra* Section III.A. Therefore, I will deny his motion for leave to file his Proposed Amended Petition as well. *See Ciralsky*, 355 F.3d at 673.

IV. CONCLUSION

Petitioner has not established grounds for altering or amending the Court's March 13, 2024 decision. As such, the Court will deny that motion and petitioner's motion for leave to file his Proposed Amended Petition. The Court will issue an Order consistent with this Memorandum Opinion and, per the discussion in Section III above, a corrected version of the March 13, 2024 Order.



RICHARD J. LEON
United States District Judge

